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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,812	08/17/2006	Achim Kraus	022862-1103	2427
23409 7590 12/20/2011 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER GRAHAM, GARY K				
ART UNIT		PAPER NUMBER		
3727				
NOTIFICATION DATE		DELIVERY MODE		
12/20/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mkeipdocket@michaelbest.com

# Office Action Summary

**Application No.**

10/589,812

**Applicant(s)**

KRAUS ET AL.

**Examiner**

GARY GRAHAM

**Art Unit**

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1-6, 8-12 and 14-21 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-6, 8-12 and 14-21 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 20110127
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 27 January 2011 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There appears insufficient original support for a stress-controlling element surrounding a breaking point embodied as a hole. The written description does not appear to discuss such. While paragraph 25 of applicant's specification discusses a central bore hole in the plate (30), it is disclosed that such acts

as both the stress-controlling element and the breaking point at the same time. Thus there appears no particular "surrounding" by the stress-controlling element. Additionally, figure 1 (in which particular structure in the center of the plate 12 cannot be easily discerned) appears to show both lead lines for the stress-controlling element (46) and the breaking point (36) directed to the same structure. Thus there appears no particular surrounding shown. Clarification is requested.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6, 8-12 and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz (WO publication 05/035440) in view of Masuda (US patent application publication 2002/0083544).

The publication to Metz discloses the invention substantially as is claimed, including a wiper device (10) having a plate shaped base (not numbered but shown on part 16), a drive unit (32,34,36) arranged on said base, wiper bearings (22, 28) arranged on said base and retaining elements (18) arranged on said base.

The publication to Metz discloses all of the above recited subject matter with the exception of at least one predetermined breaking point on the base arranged in a region of the retaining element.

The publication to Masuda discloses a wiper assembly including the provision of predetermined breaking points (17c) defined by an elongated hole (17b) provided in the region of the retaining element (17a) on plate-shaped base (17) of the wiper device (fig.2). Such allows for improved impact absorbing by the wiper assembly.

It would have been obvious to one of skill in the art to provide the wiper device of Metz with predetermined breaking points, defined by a hole, in the region of the retaining element, as clearly suggested by Masuda, to improve impact absorbing by the wiper assembly and thus a reduction of pedestrian injuries.

With respect to claim 1, any of the shown structure of Metz can be the stress-controlling elements. For example, in figure 7, the finned structures extending from the bearing (28) to the base are considered as stress-controlling elements, at least as far as defined, and are embodied as material accumulations. Such appear to be “arranged in such a way” to increase stress, at least as far as defined. Note that the particular stress increase will depend on the particular application of force and does not appear to define any particular structure for the controlling elements.

With respect to claims 4, 5, 10, 11 and 19, note figures 2 and 3 of Metz wherein it can be seen that a collar-like border is provided on the plate that at least partially surrounds the drive unit (32,34,36) as claimed. Such collar would also at least partially surround a hole provided in the region of the retaining elements.

With respect to claims 6 and 12, Metz clearly shows the connection or joint of the base to a support tube (14, see figs. 2,3). While there is no particular reference number for the connection or joint, Metz is considered to disclose the claimed element where this connection occurs.

With respect to claims 8 and 14, it appears that breaking points provided on the base of Metz to enable the retaining elements to break away will be provided approximately centrally in the base, at least as far as defined.

With respect to claim 17, the provision of a hole in the plate of Metz to establish breaking points is considered to embody a "break-through", at least as far as defined, since it does allow for breaking.

With respect to claims 20 and 21, it is noted that Matsuda discloses providing predetermined breaking points (17c) adjacent the retaining element (17a) in the plate shaped base as well as predetermined breaking points (14c) between a retaining element (14a) and wiper bearing (14). It would have been obvious to one of skill in the art to provide or locate the breaking points adjacent the retaining element and between such and the wiper bearing of Metz, as clearly suggested by Matsuda, to ensure release at the joint to the vehicle body. As set forth above, the stress-controlling element defined by the finned structure on the bearing (28) will be located as claimed.

Claims 1-5, 8-11 and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp (WO publication 02/22409) in view of Masuda (US patent application publication 2002/0083544).

The publication to Rapp discloses the invention substantially as is claimed, including a wiper device (fig.1) having a plate shaped base (10), a drive unit (12,14 and motor not shown but disclosed) arranged on said base, a wiper bearing (24) arranged on said base and a retaining element (22) arranged on said base.

The publication to Rapp discloses all of the above recited subject matter with the exception of at least one predetermined breaking point on the base arranged in a region of the retaining element.

The publication to Masuda discloses a wiper assembly including the provision of predetermined breaking points (14c, 17c) defined by an elongated hole (14b, 17b) provided in the region of the wiper bearing holding shaft (104) and the region of the retaining element (14a,17a) on plate-shaped base (17) of the wiper device (fig.2). Such allows for improved impact absorbing by the wiper assembly.

It would have been obvious to one of skill in the art to provide the wiper device of Rapp with predetermined breaking points, defined by a hole, in the region of the retaining element or wiper bearing on the base, as clearly suggested by Masuda, to improve impact absorbing by the wiper assembly and thus a reduction of pedestrian injuries.

With respect to claim 1, any of the shown various structures (recesses, projections) of Rapp can be the stress-controlling elements. For example, in figures 1, 2 the finned structures and collar borders extending from the base and around the bearing (fig.2) are stress-controlling elements, at least as far as defined. Such appear to be “arranged in such a way” to increase stress, at least as far

as defined. Note that the particular stress increase will depend on the particular application of force and does not appear to define any particular structure for the controlling elements.

With respect to claims 4, 5, 10, 11 and 19, note figures 1, 2 of Rapp wherein it can be seen that a collar-like border is provided on the plate that at least partially surrounds the drive unit as claimed. Rapp also discloses a collar-like border at least partially surrounding the wiper bearing (fig.2). Such collar borders would also at least partially surround a hole provided in the region of the retaining elements.

With respect to claims 6 and 12, Metz clearly shows the connection or joint of the base to a support tube (14, see figs. 2,3). While there is no particular reference number for the connection or joint, Metz is considered to disclose the claimed element where this connection occurs.

With respect to claim 8, it appears that breaking points provided on the base of Rapp to enable the retaining elements to break away will be provided approximately centrally in the base, at least as far as defined.

With respect to claim 17, the provision of a hole in the plate of Rapp to establish breaking points is considered to embody a "break-through", at least as far as defined, since it does allow for breaking.

With respect to claims 20 and 21, it is noted that Matsuda discloses providing predetermined breaking points (17c) adjacent the retaining element (17a) in the plate shaped base as well as predetermined breaking points (14c) between a retaining element (14a) and wiper bearing (14). It would have been obvious to one of skill in the art to provide or locate the breaking points adjacent the retaining element and between such and the wiper bearing of Rapp, as clearly suggested by Matsuda, to ensure release at the joint to the vehicle body. As set forth above, the stress-controlling element defined by extending ribs will be located as claimed.

***Response to Arguments***

Applicant's arguments filed 27 January 2011 have been fully considered but they are not persuasive.

Initially, applicant appears to argue that neither Metz nor Rapp teach or suggest, apparently by themselves, providing predetermined breaking points in their plate-shaped bases. This is not particularly disagreed with. As set forth above, Matsuda is relied upon to teach the provision of breaking points within plate-shaped bases of windshield wiper devices. Matsuda suggests placing such breaking points, formed by providing holes in the base, adjacent to wiper bearings and between such and retaining elements.

Applicant goes on to argue that since neither Metz nor Rapp disclose breaking points in and of themselves, none of the other structure disclosed thereby could act as stress-controlling elements. Such is disagreed with. Applicant has not defined any particular structure for the stress-controlling elements that distinguishes from that which has been set forth above. It appears applicant is attempting to distinguish from the prior art by mere functionality. However, apparatus claims must be structurally distinguishable from the prior art. Why would the structure identified above not inherently act as stress controlling elements as claimed? Such elements are already present in both Metz and Rapp and it appears will be inherently capable of performing as such, at least as far as defined. The stress-controlling elements appear based upon a not defined impact which does not appear to impart any particular structure to the controlling elements that would distinguish from the elements identified in Metz or Rapp. How does such functionality structurally distinguish the controlling elements from those of Metz or Rapp? It appears the particular impact (direction, force, area, etc.) will determine whether the controlling elements increase stress or not. It is noted that a

particular impact does not make up a part of the claimed wiper device. If the controlling elements identified above in Metz and Rapp are the only structure which receives the impact then they will inherently increase the stress in the base on the predetermined breaking point since all the force would have to pass through such elements. Stress-controlling elements as identified in Metz and Rapp are considered to be "arranged in such a way", at least as far as defined, such that stress will increase in an impact. This language relates to pure functionality of the elements and imparts no structure thereto to distinguish from Metz or Rapp.

Additionally, it is noted that the mere presence of a hole in the base (applicant's specification paragraph 25) can work as both a stress-controlling element **and** a breaking point at the same time. In view of such, it is unclear how a hole or holes provided in the bases of either Metz or Rapp would not act or at least be capable of acting as both the stress-controlling element and breaking point in the same manner. Clarification is requested.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GARY GRAHAM whose telephone number is (571)272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/  
Primary Examiner, Art Unit 3727